

relocating the facility or the existing microwave operator is fully compensated for those increased costs.²⁶ However, reimbursement for increased recurring costs should be limited to a single five-year term, rather than the ten-year term suggested in the Notice,²⁷ because the term of a microwave license is typically five years.²⁸ The compensation incumbents receive should be based on their own license terms, rather than the licensing procedures for PCS.

2. Comparable Facilities Should be Limited to Actual Relocation Costs, Not Consulting or Legal Fees

In its filings detailing the relocation problems PCS licensees are encountering, PCIA noted that certain incumbents and their advisors are attempting to unfairly exploit the FCC's generous relocation timeframes which were designed to protect licensees from service interruptions, not to provide an opportunity to secure windfall profits. PCIA agrees with the tentative conclusion that an incumbent's right to comparable facilities be limited to the actual costs associated with providing a replacement system. Extraneous expenses, such as fees for attorneys and consultants that are hired by the incumbent without the advance approval of the PCS relocater, should not be reimbursable after the voluntary negotiation period has concluded.²⁹ This will provide

²⁶ Notice, ¶ 74.

²⁷ Id., ¶ 74.

²⁸ 47 C.F.R. § 94.39.

²⁹ Notice, ¶ 76. However, as explained in Section I, PCIA supports the elimination of the voluntary negotiation period.

incumbents an incentive to negotiate a relocation agreement early and preclude the anomalous situation of a PCS licensee funding attorney and consultant efforts to extract windfall premiums from the process.

3. Parties Unable to Conclude Negotiations After One Year Should Be Required to File Two Independent Cost Estimates of a Comparable System with the FCC

PCIA also agrees that additional information about the value of an incumbent's current system and the anticipated cost of relocation would help to facilitate the completion of stalled relocation negotiations.³⁰ Requiring parties currently in negotiations that have not reached an agreement within one year after the commencement of the voluntary period, if it is maintained, to file with the Commission two independent cost estimates (disaggregated by link) will give the parties an independent basis around which to come to an agreement and avoid the need to utilize dispute resolution procedures. PCIA recommends that this information be placed in the PCS licensee's "file" and the microwave incumbent's "file" at the FCC.

4. PCS Providers' Responsibilities Should Be Limited to Providing a System of the Same Quality for Any Link Suffering Interference

PCIA supports the FCC's conclusion that PCS licensees are not required to replace existing analog with digital equipment when an acceptable analog solution exists.³¹ In PCIA's view, the FCC's rules have always been clear in requiring only

³⁰ Id., ¶ 78.

³¹ Id., ¶ 77.

that PCS relocators provide incumbents with a comparable, not an upgraded, system. If incumbents with links using analog technology desire to obtain digital equipment that exceeds the parameters of their current system, they must bear the additional cost. This gives an incumbent the choice of accepting either a fully constructed comparable system or a payment for the cost of a comparable system, which could then be used to obtain upgraded equipment. However, if the incumbent chooses to have an upgraded system installed or to install its own comparable system, it should bear the costs of remedying any problems that occur with the new system.³² PCS providers should not be held responsible for the performance of relocated systems which they did not construct.

In addition, PCIA is pleased that the Commission has clarified that PCS licensees are only required to relocate links suffering interference from PCS operations.³³ The FCC's transition rules consistently have encouraged PCS providers to relocate entire microwave networks that include non-interfering links outside the PCS provider's particular service area without requiring such a result, even as part of a comparable system during the mandatory negotiation period. Nonetheless, PCIA's members are working with microwave incumbents to accommodate their concerns regarding large networks, and PCIA believes that in most cases the parties are finding mutually acceptable solutions. Indeed, the cost sharing proposal addressed in this

³² Id., ¶ 77.

³³ Id., ¶ 76.

Notice should make it easier for PCS licensees, although they are not required to do so, to accommodate incumbents desiring system relocations.

C. The FCC Should Not Permit Additional Microwave Licensing in PCS Spectrum

PCIA strongly supports the Commission's decision no longer to permit primary licensing of microwave stations in the PCS band with the exception of minor modifications which do not increase the costs of relocation for PCS providers.³⁴ However, PCIA believes that this ban should be extended to include secondary operations. There can be no justification for further exacerbating the spectrum clearing difficulties facing PCS licensees at this critical stage of the deployment process.

The initial PCS auctions have been completed and PCS providers are beginning to relocate microwave incumbents in their license areas and to deploy PCS systems. Additional secondary links will likely suffer interference from and cause interference to PCS operations and will further complicate the relocation process. Although such secondary operations may not suffer interference immediately, as PCS licensees expand their systems over the next few years, these links will have to cease operations, leaving their operators with relatively new equipment that can no longer be used. If incumbents need to expand their systems prior to relocation, new links can be added at other frequencies, such as 4, 6 and 11 GHz.

³⁴ Id., ¶ 89.

D. The FCC Should Permit PCS Licensees to Initiate the Transition Period for Microwave Licensees in the C, D, E and F Blocks

The FCC announced that the voluntary negotiation period began for the A and B block licensees on April 5, 1995. However, A and B block PCS operations will in many cases cause interference to microwave links in the adjacent C, D, E, and F blocks, and these links will need to be relocated in order for A and B block licensees to deploy their systems. PCIA recommends that the FCC clarify that PCS licensees can initiate the voluntary negotiation period with an incumbent operating in adjacent spectrum by sending a letter stating that a PCS licensee would like to begin relocation negotiations. This would give the incumbent the full voluntary and mandatory negotiation periods while still allowing the PCS licensees to relocate the incumbents whose operations would suffer interference from the deployment of a PCS system.³⁵ However, once the voluntary period has been initiated for an incumbent in the C, D, E, or F block by notification from a PCS provider, that incumbent should not receive an additional voluntary negotiation period when the FCC announces the start of the voluntary period as it begins accepting applications for licenses in those blocks.

E. Clarifications of the Twelve-Month Test Period Are Required

PCIA has significant concerns regarding the twelve-month test period for relocated microwave links.

³⁵ See Section I regarding the voluntary negotiation period.

1. The FCC Should Hold Incumbent Authorizations During the Test Period

PCIA agrees with the Commission that the test period should run from the time the microwave licensee commences operations on its new system.³⁶ However, the incumbent should be required to return its license to the FCC upon cutover to the new system. Allowing microwave licensees to retain their licenses during the test period will only cause confusion as to when the test period expires. The FCC should hold the authorizations during this period and issue a public announcement when the test period is over as part of the Commission's public notice process.

2. The Test Period Should Be Waivable By Contract and Is Not Applicable to Incumbents Who Accept a Cash Payment

The Commission should make clear that the test period is waivable by incumbents by contract. If an incumbent is willing to accept compensation in exchange for elimination of the test period, the parties should be allowed to reach such an agreement. However, if the incumbent is being paid cash in order to relocate its system or is designing its own replacement system, the PCS licensee is not responsible for any difficulties that may occur, and the incumbent should not be allowed to return to its previous spectrum if its new system design is flawed. Allowing incumbents relocating their own systems to take advantage of the test period makes the PCS licensees' ability to deploy their system dependent on an incumbent's own relocation efforts, something over which the PCS licensee has no control.

³⁶ Notice, ¶¶ 84-85.

In the case of disputes concerning the comparability of new facilities during the twelve-month test period, the FCC should provide for independent engineering analyses and arbitration under the same policies applicable to cost disputes that arise during the negotiation process. Requiring that incumbents and PCS providers seek evaluations by independent third parties will give the negotiators an unbiased basis for comparison and will facilitate agreements.

3. PCS Providers Should Not Be Required to Hold the Spectrum from a Relocated Path in Reserve

PCIA also believes that further clarification of the test period requirements are needed to avoid creating unwarranted obstacles to PCS deployment. Although microwave incumbents must be assured of receiving fully comparable communications systems, that can and should be accomplished without unnecessarily delaying the relocation process. The FCC should clarify that if the alternative facilities to which a microwave licensee is relocated prove not to be comparable during the test period, the licensee need not be restored to its original 2 GHz spectrum, but rather would be entitled to the provision of comparable service by some other appropriate means. This would avoid any requirement to hold the incumbent's 2 GHz spectrum in reserve during that twelve-month period. Forcing PCS licensees to hold this spectrum in reserve will delay the deployment of PCS for at least one year.

F. Incumbents Should Be Required To Verify Public Safety Status

In its filings with the Commission, PCIA has stressed its concern with PCS providers' ability to determine which incumbents are entitled to the extended relocation

periods for public safety licensees. PCIA strongly supports the FCC's tentative conclusion that an incumbent claiming public safety licensee status must establish: (1) that it is eligible in the Police Radio, Fire Radio, or Emergency Medical, or Special Emergency Radio Services, (2) that it is a licensee in one or more of these services, and (3) that the majority of communications carried on its facilities involve safety of life and property, before it may take advantage of the extended transition period under the FCC's rules.³⁷ The public safety licensee must provide such documentation to the PCS licensee promptly upon request. If the incumbent fails to provide the PCS licensee with the requisite documentation within a reasonable time, for example thirty days, the PCS licensee may presume that public safety treatment is inapplicable to the incumbent. Requiring such a showing will ensure that only incumbents meriting the public safety negotiation periods under the FCC's rules are allowed the advantages of those extended schedules. However, PCIA does not believe that these extended periods are necessary to protect public safety operations.

G. The Standard for Public Safety Status Should Be That Substantially All Communications Are Used for the Protection of Life and Property

If the FCC maintains the voluntary negotiation periods, PCIA believes that the definition of public safety licensees entitled to extended relocation periods should be further narrowed. Currently, to be eligible for the three-year voluntary and two-year mandatory negotiation periods, an incumbent must demonstrate that a majority of its

³⁷ Notice, ¶¶ 80-81.

communications are involved in the protection of life and property. Since these extended relocation periods can have such serious consequences on the deployment of PCS, PCIA believes that the facilities granted such treatment should be strictly limited to emergency links. Therefore, PCIA proposes that the FCC narrow the definition of public safety to those incumbents that:

- are eligible in the Police Radio, Fire Radio, or Emergency Medical, or Special Emergency Radio Services,
- are licensees in one or more of these services, and
- have substantially all of the communications carried on their facilities involve safety of life and property.

PCIA believes that this definition would properly narrow the scope of the extended transition period to facilities only used for emergency purposes.

IV. PCIA SUPPORTS THE FCC'S PROPOSED PLAN WITH THE FOLLOWING CLARIFICATIONS TO ENSURE THAT THE MAXIMUM POSSIBLE BENEFITS ARE OBTAINED FROM COST SHARING

The FCC's proposed cost sharing plan will allow for an equitable allocation of relocation costs between benefitting PCS providers and facilitate the relocation process.

A. The Cost Sharing Formula Properly Allocates Relocation Costs

As the basis for determining cost sharing payments, PCIA supports use of the formula it proposed to the FCC.³⁸ In cases where full reimbursement is not required, the formula balances the interests of initial and later market entrants, taking into

³⁸ Id., ¶ 29.

account the time the PCS provider enters the market, amortization of the actual relocation expenses, and the number of PCS entities who benefit from the relocation.

To calculate depreciation, PCIA supports the FCC's tentative conclusion that the date from which depreciation is calculated should be based on the date that the PCS relocater acquires its reimbursement rights.³⁹ This ensures that the depreciation will be fairly calculated based on the advantage each PCS entity receives from the relocation of a link. If a uniform date is set for all depreciation calculations, then the PCS entity performing the relocation may pay an unreasonably large share of the relocation costs if it relocates the link significantly after the uniform date.⁴⁰ A uniform date which forces the relocating entity to pay a share proportionately larger than the benefits it is receiving from the relocation will encourage PCS providers to delay relocating a link in the hope that another provider will relocate the link and be liable for the larger payment. This is exactly the type of problem that cost sharing is designed to prevent.

B. Only Actual Costs Should Be Eligible for Sharing

As stated in its original cost sharing proposal, PCIA believes that premium payments above actual relocation cost must be excluded from cost sharing reimbursement.⁴¹ Since premiums are by definition payments in excess of actual costs,

³⁹ Id., ¶ 30. See Section III.C.3 regarding reimbursement rights.

⁴⁰ See id., ¶ 31.

⁴¹ Id., ¶ 37.

they will be negotiated by the PCS provider and incumbent without any framework, as opposed to actual relocation costs which will be negotiated based on a comparable system. Therefore, those PCS providers entering the market later should not be liable for any part of a payment which is being paid voluntarily and is not required by Commission rules. Actual relocation costs would include such items as: radio terminal equipment; antennas; necessary feed lines and multiplex equipment; tower modifications; back-up power equipment; monitoring and control equipment; engineering costs (design, path survey, etc); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment; spare equipment; project management; site lease renegotiation; power plant upgrade; electrical grounding systems; HVAC; alternate transport equipment; and leased facilities.⁴²

PCIA is pleased that the FCC supports its proposed cap of \$250,000 per link on actual relocation expenses and a separate cap of \$150,000 for the costs of constructing all towers associated with a link.⁴³ Although the cap may result in some PCS

⁴² In many cases, PCIA expects that PCS providers and microwave incumbents will negotiate a relocation agreement in which the PCS provider pays the incumbent a set sum and the incumbent undertakes the relocation, rather than having the PCS provider build the incumbent a relocated system. In such cases, the PCS provider will be responsible for substantiating its payment on the basis of comparable replacement system costs in order to be eligible for cost sharing.

⁴³ Notice, ¶ 43. A link is typically comprised of paired transmitting and receiving antennas and associated electronics located at two endpoints separated by an air interface.

providers absorbing the additional costs of relocating more expensive links, it gives PCS providers a strong incentive to control relocation costs responsibly. The cap also protects PCS interests who will be required to make cost sharing payments long after a link has been relocated and who will have had no input into the negotiation of the relocation costs. In addition, the cap will lower administrative costs by minimizing disagreements between PCS providers over the reasonableness of relocation costs.

C. The Trigger for Cost Sharing Obligations Must Be Easy to Apply

PCIA supports the idea that a PCS provider should be responsible for cost sharing only if it would cause interference to or receive interference from a co-channel microwave link's operations in the PCS provider's licensed frequency bands and service area borders.⁴⁴ This will create a bright line rule for when cost sharing is required which will minimize potential disputes and reduce the administrative costs associated with cost sharing.

1. There Should Be No Consideration of Adjacent Channel Interference

No cost sharing should be required based on adjacent channel interference because it would involve so many cost sharing payments that the administrative costs would exceed the benefits. Each relocated link could potentially cause adjacent channel interference to several PCS providers prompting numerous additional cost sharing

⁴⁴ Id., ¶¶ 33-34, 52-56.

payments. Using the FCC's example in the Notice,⁴⁵ if a PCS provider relocates a link within its geographic market but outside its frequency block, the relocater should be entitled to 100% reimbursement up to the amount of the cap. PCIA has used the chart in the Notice⁴⁶ to demonstrate how PCIA would calculate cost sharing obligations. The text in italics represents the differences between PCIA's proposals and those in the Notice.

	Fully Within the Relocator's Block	Partly Within the Relocator's Block	Outside the Relocator's Block
Both Endpoints Inside the Relocator's Geographic Market	No reimbursement	Pro rata reimbursement according to the formula	<i>100% reimbursement (up to the cap) of original costs</i>
One Endpoint Inside the Relocator's Geographic Market	<i>Reimbursement (up to the cap) for 50% of the link relocation cost</i>	Pro rata reimbursement according to the formula	<i>100% reimbursement (up to the cap) of original costs</i>
No Endpoints Inside the Relocator's Geographic Market	100% reimbursement (up to the cap) of original costs	100% reimbursement (up to the cap) of original costs	100% reimbursement (up to the cap) of original costs

Therefore, even if a PCS provider relocates a link outside its spectrum block and/or geographic area because of adjacent channel interference, the PCS provider should still be entitled to 100% reimbursement (up to the cap) by those PCS providers

⁴⁵ Id., ¶ 34.

⁴⁶ Id.

who are co-channel with the relocated link and would have caused interference to its operations since the relocating PCS provider would have relocated an out-of-band link. Although this would result in the relocator benefitting from a relocation while receiving 100% reimbursement without being required to cost share, PCIA believes that the administrative burdens that such a payment scheme would produce merit the use of "rough justice" in determining cost sharing obligations. There is no reason to require cost sharing based on adjacent channel interference in this case as opposed to any others. In addition, in spite of the 100% reimbursement, the relocator will be absorbing the additional costs, such as the relocation negotiations and any amounts over the cap required to relocate the link.

In cases in which a PCS provider has relocated a link outside its service area and/or spectrum block and is entitled to 100% reimbursement up to the cap, PCIA believes that the reimbursement should not be depreciated using the cost sharing formula -- the co-channel interfering PCS provider should be responsible for the entire relocation cost up to the cap. Because this later market entrant would have had to relocate the link had it not already been relocated, and because the later market entrant is co-channel with the relocated link and within the same service area, that later entrant should pay all of the relocation costs and then hold the reimbursement rights for that link. In effect, the later entrant would stand in the shoes of a relocator for all cost sharing purposes. Any additional reimbursement payments would be calculated under

the cost sharing formula and be made directly to the later market entrant, not to the relocater.

There are several reasons for not applying the formula for out-of band and/or out-of-service area relocations. First, the later market entrant gets substantial benefits from the relocation, such as the ability to begin service immediately and the relocater's absorption of negotiating costs. In addition, the costs the later market entrant is liable for are still capped and, in the case of entrepreneurs, the costs can be paid over time to the relocater. In most cases, the relocater will be complying with the FCC rules which encourage system-wide relocations, relocating links which are part of the same network with links that may suffer interference from the relocater's PCS system.

2. PCS Providers in the Same License Blocks Should Pay Equal Shares of Relocation Costs for Links in Their Spectrum

As illustrated in the chart above, PCIA proposes that when a link is located fully within the relocater's block but with only one endpoint within its geographic market, the relocater should be entitled to reimbursement of 50% of its relocation costs up to the cap if another PCS provider enters the market and would have interfered with or suffered interference from the link. PCIA would not apply the formula in this case because since the link will be fully within the relocater's spectrum, any other PCS provider who would be liable for cost sharing obligations would be a licensee in the same block and would benefit at approximately the same time. To apply the cost sharing formula in this scenario might encourage PCS providers to delay their required relocations in the hope other PCS entities in their block will relocate links before them.

In that way, the subsequent PCS entity would enjoy the benefit of the cost depreciation. Such an incentive is detrimental to prompt PCS deployment. PCIA believes that this is an equitable method of dividing costs between PCS providers who will be receiving their licenses at the same time. Applying the formula in other cases ensures that PCS providers who receive their licenses at the same time pay an equal share of relocation costs while allowing those who receive their licenses and enter the market later to pay a share of relocation costs more commensurate with the benefit they are receiving.

3. Reimbursement Rights Should Be Used to Record Cost Sharing Obligations

PCIA supports the creation of reimbursement rights as proposed by the FCC.⁴⁷ However, PCIA believes that these rights should be created when a microwave link cuts over to its new system or, if it chooses a cash payment, when it ceases operations. The FCC has proposed that these rights be created when a relocation agreement is filed with the clearinghouse. This date could be subject to manipulation and could discourage PCS providers from filing their agreements promptly in order to avoid starting the depreciation that will be calculated in the cost sharing formula. PCIA believes that using the date of the cutover to the incumbent's new system or ceasing operations is less subject to manipulation.

⁴⁷ Notice, ¶¶ 46-49.

4. The FCC Must Designate One Standard for the Clearinghouse to Determine Interference

In order for the cost sharing plan to be successful, it is imperative that the FCC designate one consistent and verifiable standard under which the clearinghouse can determine if a PCS provider would have caused interference to a microwave incumbent's operations for cost sharing purposes.⁴⁸ Because of difficulties associated with the application of various methods for computing interference, PCIA is proposing a standard comprised of elements from several industry-accepted models that lend themselves to ease and consistency of application.

As recognized by the FCC, the most appropriate model for propagation loss prediction is the Irregular Terrain Model (ITM), also known as Longley-Rice, in the point-to-point mode. This model is well defined by the National Telecommunications and Information Administration (NTIA), which maintains the computer code. This model also accurately uses terrain profiles to determine the propagation loss.

For the interference calculations needed to determine when cost sharing is appropriate, PCIA supports using interference criteria based on TIA Bulletin 10 (current version). The following is a specific procedure for computing interference objectives which are suitable for determining cost sharing obligations:

- Analog C/I Objective: Equation (A-9), TIA Bulletin 10F
- Analog Threshold Degradation Objective: Equation (A-16), TIA Bulletin 10F

⁴⁸ Id., ¶ 52.

- Digital Interference Objective: Equation (2.5.5-1), TIA Bulletin 10F
- T/I Ratio: Equations (B-3) & (B-4), TIA Bulletin 10F.

PCIA believes that this standard is the best method for determining interference and can be applied in a relatively straightforward manner by the clearinghouse. However, what is most important is having a consistent, clear standard that the clearinghouse can apply to all licensees and UTAM. Additionally, UTAM's cost sharing obligations would also be based on when it would benefit from a relocation. A trigger mechanism, based on the interference calculations, assumptions, and procedures for the calculations of PCS to microwave interference (and which governs the deployment of unlicensed PCS) will need to be developed.

5. PCIA Supports the FCC's Timing Determinations

PCIA further supports the FCC's tentative conclusions on several timing issues. PCS providers should be permitted to seek reimbursement for any relocation costs incurred after the voluntary negotiation period began for A and B block licensees on April 5, 1995.⁴⁹ This will ensure that the costs of the microwave links that have already been relocated will be fairly shared among the PCS providers who benefit from those relocations.

In addition, a PCS provider should be required to pay amounts due under the cost sharing formula at the time that its operations would have caused interference with

⁴⁹ Id., ¶ 35.

the relocated link.⁵⁰ PCIA agrees that PCS providers should be responsible for contacting the clearinghouse (through distribution of a Prior Coordination Notice⁵¹ to the clearinghouse) to determine reimbursement obligations prior to initiating service but should not be required to make payment until the date that the PCS provider commences commercial operations since this is when a PCS provider experiences its true benefit.

D. Private Agreements Outside the FCC's Plan Should Be Permitted

PCIA has continually stressed that if PCS providers negotiate agreements which share relocation costs, those agreements should take precedence over a cost sharing plan. In some cases, it may be more efficient for PCS providers who must relocate large numbers of links to coordinate their efforts with other PCS providers who need to relocate the same links. PCIA proposes that any party signing a separate agreement be required to notify the clearinghouse that an agreement has been signed between certain parties and which links are affected. If a PCS provider party to a separate agreement wants cost sharing reimbursement from other PCS providers not subject to the agreement, it can register its relocation with the clearinghouse and provide any affected parties with the relocation cost data. However, all PCS providers, whether or not subject to a private agreement, should be responsible for making all cost sharing

⁵⁰ Id., ¶ 58.

⁵¹ See infra Section IV.B.

payments to relocating PCS providers required by the FCC plan unless those payments are superseded by a private agreement between or among the affected parties.

E. Entrepreneur Licensees Should Be Permitted a Deferred Payment Option

PCIA endorses the agency's proposal to give entrepreneur block licensees the option of paying their cost sharing obligations under the same installment payment procedure, including the treatment of principal and interest, as that applicable to the licensee's auction payments.⁵² This will allow those entities to pay their fair share of relocation costs but give them the additional time needed to finance their obligations.

UTAM should also be permitted a deferred payment plan, however PCIA proposes that payment plan should be as follows:

- payments would be spread out over a five year period;
- payments would be due on a quarterly basis;
- interest would be applied to UTAM's share of the relocation costs.

F. No New Cost Sharing Obligations Should Be Incurred After April 4, 2005

PCIA agrees that the cost sharing plan should sunset for all PCS providers ten years after the date that the voluntary negotiation period commenced for A and B block licensees, April 4, 2005.⁵³ This will ensure that the administrative burdens of cost sharing do not outweigh the benefits it will provide. However, the FCC should clarify

⁵² Notice, ¶ 61.

⁵³ Id., ¶ 39.

that the sunset date means only that no additional cost sharing obligations can be incurred after that time and that it will have no impact on obligations already incurred. Because entrepreneur licensees and UTAM will be paying their obligations on a deferred schedule, their obligations should continue past the sunset period if the obligation was incurred prior to April 4, 2005.

V. THE FCC SHOULD DESIGNATE PCIA AS THE PCS INDUSTRY CLEARINGHOUSE TO MANAGE THE MICROWAVE RELOCATION COST SHARING PLAN

In order to maximize the efficiencies and coordination benefits of cost sharing, a single entity will be necessary to administer the cost sharing process. Establishment of an industry managed and supported clearinghouse to oversee the cost sharing mechanism will permit the PCS providers to tailor the process to best meet their needs.⁵⁴ It will also ensure that the burdens of overseeing the cost sharing proposal are borne by the industry rather than the FCC. Accordingly, PCIA urges the Commission to designate such an entity as proposed in the Notice and, as shown below, to choose PCIA to fulfill this important role in the microwave relocation process.

⁵⁴ Id., ¶¶ 63-65.

A. PCIA Has the Necessary Qualifications and Resources

As stated in its proposal to the FCC, PCIA is prepared and qualified to serve as a Section 332 coordinator for the cost sharing program.⁵⁵ PCIA is well-suited to take on the responsibilities of the cost sharing clearinghouse. As an international trade association, PCIA has experience in all areas of wireless services and has virtually every major wireless communications carrier and manufacturer as a member, including the majority of PCS licensees. In addition, PCIA has the coordination experience, staff, and resources necessary to serve as a clearinghouse.

Moreover, because of its participation in the PCS proceedings, PCIA is already familiar with the microwave relocation rules and is working with its members to address the many difficult issues arising out of that process. Since the initiation of the PCS proceedings, PCIA has been an active participant in both the FCC docket establishing the PCS allocations and rules and the docket determining the microwave relocation procedures. PCIA also has a record of fair and impartial administration and a long history of working with many differing wireless industry sectors to achieve consensus across a wide range of issues.

As a result of its merger with the National Association of Business and Education Radio (NABER), PCIA is now the largest FCC-designated frequency coordinator in the Business Radio Service, processing over 40,000 applications for

⁵⁵ PCIA's Proposal for a PCS Microwave Relocation Cost Sharing Clearinghouse, RM-8643 (filed Sept. 6, 1995).

frequency assignments annually. PCIA has a highly trained staff already familiar with coordination procedures and confidentiality restrictions. Currently, PCIA employs twenty full-time coordinators who are supported by ten management information systems specialists. Because of its coordination activities, PCIA has an advanced electronic delivery system which would allow PCS providers to file and receive their reports electronically.

B. PCIA Has Extensively Explored the Necessary Structure and Functions of the Clearinghouse

The role of the clearinghouse will be to coordinate the cost sharing mechanism. To this end, the clearinghouse will need to perform a number of functions, including establishing and maintaining an accurate database containing all the relevant information; prescribing guidelines for calculating actual relocation costs which are eligible for sharing; and assisting in resolving disputes through negotiation and arbitration. The role of the clearinghouse in a relocation would be as follows:

- A PCS provider would notify the clearinghouse after it has signed a relocation agreement and supply information in a specified format.
- The clearinghouse will identify all PCS providers which may be liable for cost sharing for the relocated link based on the cost sharing plan guidelines.
- All PCS providers will supply the clearinghouse with prior coordination notices (PCNs) as defined in NSMA recommendation WG20.95.045 upon deployment of their networks. The clearinghouse will use the PCNs to determine each PCS provider's cost sharing obligations. If another PCS provider is liable for cost sharing, the clearinghouse will direct the PCS provider to contact the appropriate relocating entity. Upon request, the relocating entity will be responsible for supplying

pertinent cost information to the PCS entity identified as a cost sharing participant.

- PCS providers, with the exception of entrepreneur licensees and UTAM, will be required to make all cost sharing reimbursement payments within sixty days of receiving notice of liability. Entrepreneur licensees and UTAM will be entitled to make payments on a deferred schedule, as discussed above.
- All PCS providers will notify the clearinghouse upon receipt of payment.
- If any disputes arise regarding the costs eligible for sharing, payment obligations, or any other aspect of the cost sharing process, the clearinghouse will recommend that the parties utilize alternative dispute resolution procedures. PCS providers that question a cost sharing obligation would be required to notify the clearinghouse and the other affected PCS providers within thirty days of receiving the notice of liability that it would like to proceed to arbitration.
- Microwave licenses should be surrendered to the FCC when the cutover to the new system occurs, and then the FCC should announce when a microwave license has been surrendered and any applicable test period is completed.

To ensure cooperation with the clearinghouse, PCS licenses should be conditioned on compliance with the cost sharing rules. All PCS providers should be required to participate in the clearinghouse, including filing PCNs. Failure of a PCS provider to comply with the cost sharing rules should result in forfeiture or license termination. The FCC should review any failures to comply with cost sharing obligations as part of any PCS licensing process, such as transfer, assignment, or renewal.⁵⁶

⁵⁶ Notice, ¶ 67.

PCIA has expended significant resources studying the role of the clearinghouse and the best method of implementing a cost sharing plan. Because of its coordination experience, participation in the PCS proceedings, and industry reputation, PCIA is the entity most prepared and qualified to assume these responsibilities and the majority of PCS licensees have encouraged PCIA to assume these functions.

VI. CONCLUSION

The FCC has moved swiftly to initiate the rulemaking necessary for modifying the PCS transition rules and adopting a cost sharing plan. Most important to expediting the deployment of PCS, PCIA strongly urges the Commission to reconsider the voluntary negotiation periods for microwave relocation and instead to require a one-year mandatory relocation period initiated by notification by a relocating PCS provider. In addition, PCIA supports the Commission's proposals for modification of the transition rules and believes these changes will facilitate the relocation process for both PCS providers and microwave incumbents. PCIA also recommends adoption of the cost sharing plan with the few modifications specified herein and believes that PCIA is best-suited and to undertake the role of the PCS cost sharing clearinghouse. PCIA requests that the Commission continue to expedite consideration of these issues because of their critical importance to ensuring the rapid deployment of PCS products and services. Without the clarifications and modifications to the rules recommended